

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CR. NO. 20-1370 KWR

JULIAN LUCAS GARCIA, III,

Defendant.

**DEFENDANT'S RESPONSE TO THE UNITED STATES' OPPOSED SECOND
MOTION IN LIMINE TO PRECLUDE DEFENSE EVIDENCE OR COMMENT**

Defendant Julian Garcia, III, through his counsel of record, Robert J. Gorence of the Gorence Law Firm, LLC, hereby responds to the United States' Opposed Second Motion in Limine to Preclude Defense Evidence or Comment as follows:

A. ALLEGATIONS OF GOVERNMENT MISCONDUCT

In this case, Mr. Garcia will not be alleging nor arguing governmental misconduct as a defense in this case.

B. PRE-TRIAL RULINGS

Mr. Garcia does not oppose the government's request with regard to introducing "any evidence, making any statement or asking any questions regarding the contents of rulings," as long as it applies equally to counsel for the government.

C. PLEA NEGOTIATIONS

Discussions are inadmissible by rule and Mr. Garcia will not be introducing any evidence nor making any statements regarding prior plea negotiations. Importantly, this rule must apply to counsel for the government as well.

D. OFFERS TO STIPULATE

Mr. Garcia does not oppose this section of the Motion in Limine as long as it also applies

to the government.

E. INFORMATION KNOWN ONLY TO DEFENDANT

Mr. Garcia does not oppose this Motion, although it is anticipated that he will testify thus rendering this portion of the Motion in Limine moot.

F. INFORMATION ABOUT DEFENDANT'S FAMILY AND PERSONAL CIRCUMSTANCES

Mr. Garcia does not oppose this Motion except, if Mr. Garcia testifies, evidence of his family and personal circumstances, including work history will be highly relevant and probative for the jury to establish a basis of credibility.

G. ADMINISTRATIVE DISCIPLINE

Mr. Garcia does not oppose this motion because administrative discipline has not been levied against any possible witness.

H. DEFENSE EXHIBITS

Mr. Garcia does not oppose this portion of the Motion in Limine that seeks to preclude admittance of a defense exhibit without having first supplied it to opposing counsel. Obviously, this ruling should apply to the government as well.

I. DEFENDANT'S HEALTH

Mr. Garcia does not oppose this portion of the Motion in Limine, but if Mr. Garcia testifies, his health as it relates to his ability to recall and perceive events will be highly relevant.

J. REFERENCES TO PUNISHMENT

Mr. Garcia does not oppose this Motion.

K. CONTRIBUTORY NEGLIGENCE

Mr. Garcia opposes this motion although not as framed by the government. This obviously is not a civil case where a jury will be required to apportion fault amongst tortfeasors.

As a criminal case, contributory negligence is not a defense. In this case, the issue will be whether or not Mr. Garcia was impaired and the impairment caused the accident. The conduct of Jane Doe as she crossed a darkened highway while highly intoxicated, knowing there was traffic passing over the highway, is completely relevant as to whether this was an accident or a criminal act caused by Mr. Garcia being allegedly impaired. There will be cross-examination of the government's accident reconstructionist about Jane Doe's conduct that caused the accident when Mr. Garcia was lawfully driving an ATV in the correct lane and at an appropriate speed and was not impaired to the slightest degree by alcohol.

L. VICTIM'S PRIOR ALLEGED CONSUMPTION OF ALCOHOL

Mr. Garcia opposes this motion for the reasons stated previously.

Respectfully submitted,

GORENCE LAW FIRM, LLC

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Attorneys for Defendant Julian Garcia

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of August, 2021, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Alexander Flores, Attorney for United States
(alexander.flores@usdoj.gov)

/s/ Robert J. Gorence
Robert J. Gorence